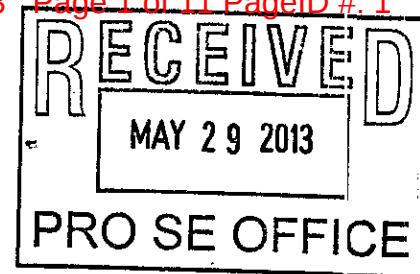


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
EASTERN

3109



Ryan Baglivy,

Plaintiff

vs.

Thomas Chell, individually and as a Detective, shield #1016, of the Police Department of the City of New York and The City of New York,

Defendants

A CIVIL ACTION

JURY TRIAL
DEMANDED

COMPLAINT

Introductory Statement

1. This is an action for damages sustained by a citizen of the United States against a Police Detective of the Police Department of the City of New York as well as the City of New York, the employer of the defendant Chell. The City of New York is sued as a person under 42 USC Sec. 1983 because of its condonation of the Official Misconduct complained of herein.

Jurisdiction

2. This action is brought pursuant to 42 USC Sec. 1983 and Sec. 1988 and the Fourth Amendment and the Fourteenth Amendment to the United States Constitution. Jurisdiction is founded upon 28 USC Sec. 1331 and 1333 (a) sub (1) (2) (3) and (4) and the aforementioned statutory and constitutional provisions.

3. The amount in controversy exceeds \$150,000.00 including interests and costs.

4. Plaintiff was, at all times relevant to the allegations of this complaint, and remains, a citizen of the United States and the State of New York.

5. At all times relevant hereto, the defendant Thomas Chell was employed by the Police Department of the City of New York as a Police Detective. He is being sued individually and in his capacity as a police officer.

6. The defendant City of New York is a municipal corporation within the State of New York and, at all relevant times acted under color of law and employed Thomas Chell as a Police Detective.

7. At all times relevant to the allegations of this complaint and in all of his actions herein, defendant Chell was acting as the agent, servant and employee of the City of New York and was acting under color of law and pursuant to his authority as a police detective.

Factual Allegations

8. On or about March 13, 2012 the plaintiff was walking along Knickerbocker Ave., Brooklyn, New York, returning to his sister's Greene Avenue apartment after moving a car to avoid a parking summons.

9. While walking down the sidewalk plaintiff became aware of a SUV type vehicle driving at low speed along Knickerbocker Avenue to his left. The SUV pulled ahead, stopped, after which exited therefrom two persons who approached plaintiff rapidly in an aggressive and frightening manner.

10. Persons stated that they were police, and, at the same time, defendant Chell raised plaintiff's jacket and put his hands in plaintiff's pockets. Defendant Chell made no allegation nor inquiry as to plaintiff's activity; he simply emerged from a vehicle and searched plaintiff's pockets.

11. Defendant Chell removed from within plaintiff's right front pocket a small folding pocket knife with a blade approximately 2 inches long.

12. Plaintiff was handcuffed and transported to a police facility where he was searched and lodged in a detention cell for about 8 hours while his arrest was processed. Plaintiff overheard a superior officer say to defendant Chell his arrest of plaintiff "is a new low for you."

13. Plaintiff was some time thereafter released from custody on a desk appearance ticket (Copy annexed hereto and made part hereof as exhibit "1") charging him with possession of a knife with a blade in excess of 4 inches, in violation of sec. 10-133 (B) of the Administrative Code of New York City.

14. Defendant Chell prepared and swore to a document charging plaintiff with the offense outlined in paragraph 13 above. (Copy annexed hereto and made part hereof as exhibit "2")

15. Plaintiff at no time possessed a knife with a blade in excess of 4 inches in length.

16. After several appearances in court, it was determined that plaintiff never possessed a knife with a blade in excess of 4 inches long.

17. Thereafter, defendant Chell submitted to the court papers charging plaintiff with possession of a "switchblade" knife. Defendant Chell swore to a charging document that he "determined it was a switchblade by depressing a lever on said switchblade, thereby activating a spring mechanism which released the blade from said switchblade" in violation of sec 265.01 of the penal law of the State of New York. Copy thereof annexed hereto and made part hereof as exhibit "3"

18. Plaintiff at no time, ever, possessed a switchblade knife

19. Defendant Chell filed with the court a notice pursuant to sec 710.30(1)(a) of the Criminal Procedure Law of the State of New York which is false, in that plaintiff made no statements as to having a knife or where a knife might be situated on his person. A search was made of the plaintiff without consent, probable cause or warrant. (Copy thereof annexed hereto and made part hereof as exhibit "4")

20. Included in the various documents in the possession of the plaintiff is a *contradictory* statement by defendant Chell which states "AT T/P/O A/O DID OBSERVE DEFT IN POSSESSION OF A KNIFE IN PUBLIC VIEW. A/O DID RECOVER KNIFE FROM DEFT RIGHT PANTS POCKET" thereby substantiating plaintiff's claim to unlawful search. (Copy thereof annexed hereto and made part hereof as exhibit "5")

21. During a court appearance on March 21, 2013, matter was disposed and the records thereof immediately sealed by the court.

22. Without prejudice to his claim of an unlawful search conducted without probable cause, warrant or consent, plaintiff did have a small knife which was lawfully possessed and was not an unlawful weapon as charged. Furthermore, it was not visibly displayed as it was fully within his pocket and only retrieved after his pocket was unlawfully searched by defendant Chell.

23. As a result of the false charges referred to herein, plaintiff was required to make numerous appearances in court, had pending against him a criminal charge for a period in excess of 1 year, feared incarceration or additional significant expense and fears difficulty in obtaining meaningful employment in the future.

24. As a result of the wrongful and unlawful conduct complained of herein and heretofore described, plaintiff suffered damage, including, *inter alia*, suffering, loss of reputation, sleeplessness, stress, humiliation, fright, emotional distress, incurred legal fees and additional expenses in connection with the defense on the above referred to charges. In addition, he was otherwise damaged because of the hereinbefore and hereinafter detailed violations of his constitutional rights as a citizen of the United States and the State of New York.

25. The Abuse to which the plaintiff was subjected, was consistent to a well known, controversial and unlawful practice of the Police Department of the City of New York which is known to and approved by the defendant City of New York, which at no

time prevented defendant Chell from engaging or continuing to engage in the unlawful conduct complained of herein; namely, but not limited to, the unlawful search of persons without probable cause, warrant or consent, and lodging of criminal charges based on the unlawful search of persons.

26. Defendant City of New York authorized, tolerated as institutionalized practices and approved of the misconduct hereinbefore detailed by:

- a. Failing to properly discipline, restrict and control its employees, including defendant Chell.
- b. Failing to take adequate precautions on the hiring, assignment and retention of police personnel including specifically defendant Chell.
- c. Failing to forward to the Kings County District Attorney evidence of criminal acts committed by police personnel and specifically defendant Chell.
- d. Failing to implement proper procedures, guidelines and/or policies regarding the duty of police officers to protect persons, including this plaintiff, from official misconduct.
- e. Allowing or permitting police officers, including defendant Chell, to unlawfully prosecute citizens, thereby condoning official misconduct
- f. As a consequence of the abuse of authority detailed above, including the City's condonation of official misconduct, plaintiff has sustained the damages hereinbefore described.
- g. Plaintiff contends that the conduct complained of herein could not exist without the collusion and condonation by the City of New York and its Police Department.

FEDERAL CLAIM

The allegations set forth in paragraphs 1 thru 26 are incorporated herein by reference.

The hereinbefore described actions and omissions, engaged in under color of state authority by the defendants, including the City of New York, sued as a person, responsible because of its authorization, condonation and/or approval of the acts of its agent, deprived plaintiff of rights and immunities secured to him by the Constitution of the United States, including, but not limited to,

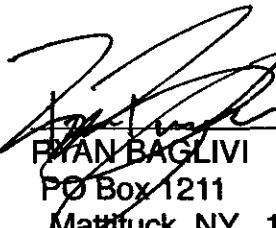
- a. His Fourth Amendment rights to be free from unreasonable search of his person, unreasonable seizure, false arrest and unlawful imprisonment.
- b. His Fourteenth amendment right to due process.

WHEREFORE, plaintiff demands the following relief:

- a. Compensatory damages, jointly and severally against both defendants, in an amount to be determined by the jury.
- b. Punitive damages against defendant Chell in an amount to be determined by the jury.
- c. Order expunging all record of this unlawful arrests from city, state and federal databases.
- d. Reasonable attorneys fees pursuant to 42 USC Sec. 1988
- e. Such other and further relief as the court may deem just and proper.

DATED: Brooklyn, NY
May 29, 2013

Yours,


RYAN BAGLIVI
PO Box 1211
Mattituck, NY 11952


631-356-8155
RBaglivи@gmail.com

POLICE DEPARTMENT OF THE CITY OF NEW YORK
Desk Appearance Ticket

Precinct of Arrest : 083

DAT Serial No. : 083-00161

OLBS Arrest-ID : K12625453

The People of the State of New York VS.

Defendant Name : BAGLIVI, RYAN,
 Defendant Address: 1399 GREENE AVENUE, 3A,
 BROOKLYN, NY

Age: 23 yrs

Date of Birth: 08/04/1988

You are hereby summoned to appear in the Criminal Court of the City of New York, to answer a criminal charge made against you.

Top Offense Charged : PL 265.01 01

County: Kings

Arraign/Part: DAT

At LOC: 120 Schermerhorn Street, Brooklyn, NY 11201

Time: 09:30 AM

Room: 412

Date: 04/16/2012

Instructions for Defendant

You must appear at the time and date indicated above, and present this form to the court clerk.

Should you fail to appear for the offense charged above, in addition to a warrant being issued for your arrest, you may be charged with additional violations of the penal law which upon conviction may subject you to a fine, imprisonment or both. Additionally, if you fail to comply with the directions of this Desk Appearance Ticket, any bail paid will be subject to forfeiture.

Additional Instructions : _____

Acknowledgement of Defendant:

I, the undersigned, do hereby acknowledge receipt of the above Desk Appearance Ticket, personally served upon me, and do agree to appear as indicated.

Defendant Signature

Time: 16 : 30

Date: 3 / 13 / 12

Photographed by:

Time: 15 : 30

Date: 3 / 13 / 12

FingerPrinted?: _____

Arresting Officer: CHELL, THOMAS Shield: -

Rank: DT3

Tax Reg.: 903607

Squad: GANG UNIT BROOKLYN NORTH

Command: 594

Agency: NYPD

Address of Agency if not NYPD: _____

Was cash bail accepted?: _____

Amount: \$ _____

Signature Issuing Officer

3 / 13 / 12
 Date


 Signature Desk Officer

EXHIBIT 1

CRIMINAL COURT OF THE CITY OF NEW YORK
PART APAR COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

STATE OF NEW YORK
COUNTY OF KINGS

V

RYAN J BAGLIVI

2012KN038575



DETECTIVE THOMAS W CHELL SHIELD NO.1016, OF BROOKLYN NORTH GANF SQUAD COMMAND SAYS THAT ON OR ABOUT MARCH 13, 2012 AT APPROXIMATELY 02:10 PM AT KNICKERBOCKER AVE AND BLEEKER ST COUNTY OF KINGS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

AC 10-133(B)

POSSESSION OF KNIVES OR INSTRUMENTS WITH A BLADE OF FOUR INCHES OR MORE

IN THAT THE DEFENDANT DID:

CARRY ON HIS OR HER PERSON OR HAVE IN SUCH PERSON'S POSSESSION, IN ANY PUBLIC PLACE, STREET OR PARK ANY KNIFE WHICH HAD A BLADE LENGTH OF FOUR INCHES OR MORE.

THE SOURCE OF DEFENDANT'S INFORMATION AND THE GROUNDS FOR DEFENDANT'S BELIEF ARE AS FOLLOWS:

DEFENDANT STATES THAT, AT THE ABOVE TIME AND PLACE, WHICH WAS PUBLIC, DEFENDANT OBSERVED THE DEFENDANT IN POSSESSION OF A KNIFE THAT HAD A BLADE IN EXCESS OF FOUR INCHES IN LENGTH IN THAT DEFENDANT DID RECOVER SAID KNIFE FROM THE DEFENDANT'S PERSON.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 810.45 OF THE PENAL LAW.

5/3/12 *Det. Wm*

DATE

SIGNATURE

①

(3)

BNGS
KCDAFax: 718-574-0426 Oct 1 2012 06:36pm P001/001
Fax: 718-250-3069 Oct 1 2012 05:43pm P001/001BROOKLYN COURT OF THE CITY OF NEW YORK
PART APART COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

STATE OF NEW YORK
COUNTY OF KINGS

RYAN J. BAGLEY

DETECTIVE THOMAS A. CLEEL, SHIELD NO. 1018, OF BROOKLYN NORTH BART SQUAD COMMAND SAYS THAT ON OR ABOUT MARCH 13, 2012 AT APPROXIMATELY 02:10 AM AT KNICKERBOCKER AVE AND BLEEKER ST. COUNTY OF KINGS, STATE OF NEW YORK, THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

PC 265.01 (1)

CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE

IN THAT THE DEFENDANT DID:

POSSESS ANY FIREARM, ELECTRONIC GART GUN, ELECTRONIC STUN GUN, GRAVITY KNIFE, SWITCHBLADE KNIFE, FILM BALLISTIC KNIFE, METAL KNUCKLE KNIFE, CAVE STICK, BILLY, BLACKJACK, BLUDGEON, PLASTIC KNUCKLES, METAL KNUCKLES, CHUKA STICK, SAND STICK, SANDCLUB, WRIST-BRACE TYPE SLINGSHOT OR SLINGSHOT, SHIRKEN OR KUNG FU STICK.

THE SOURCE OF DEFENDANT'S INFORMATION AND THE GROUNDS FOR DEFENDANT'S BELIEF ARE AS FOLLOWS:

DEFENDANT STATES THAT, AT THE ABOVE TIME AND PLACE, WHICH WAS PUBLIC, DEFENDANT OBSERVED THE DEFENDANT IN POSSESSION OF SWITCHBLADE THAT DEFENDANT DID RECOVER SAID SWITCHBLADE FROM THE DEFENDANT'S PERSON.

DEFENDANT FURTHER STATES THAT, AT THE ABOVE TIME AND PLACE, THE DEFENDANT DETERMINED THE ABOVE DESCRIBED SWITCHBLADE TO BE A SWITCHBLADE BY DEPRESSING A LEVER ON SAID SWITCHBLADE THEREBY ACTIVATING A SPRING MECHANISM WHICH RELEASED THE BLADE FROM SAID SWITCHBLADE.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 80.05 (a) OF THE PENAL LAW.

10/1/12 Det. R. Kelly
DATE SIGNATURE

EXHIBIT 3



OFFICE OF THE DISTRICT ATTORNEY, KINGS COUNTY

RENAISSANCE PLAZA at 350 JAY STREET
BROOKLYN, N.Y. 11201-2908
(718) 250-2000

CHARLES J. HYNES
District Attorney

THE PEOPLE OF THE STATE OF NEW YORK

- against -

BAGLIVI, RYAN

K12625453

NOTICE PURSUANT
TO CPL 710.30(1)(a)

Defendant(s)

Please take notice that statements in the form noted below were made by the defendant or by a co-defendant to be tried jointly, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under the direction of or in cooperation with such a public servant. Please take further notice that the People intend to offer evidence of the below statement(s) of the defendant(s) on the People's direct case at trial of this action. A transcript of any stenographically recorded statement(s) or copy of any written statement(s) are either appended or will be made available to counsel at a mutually convenient time. A copy of any electronically recorded statement(s) will be provided counsel following the receipt of an appropriate blank cartridge.

BAGLIVI, RYAN

Form of Statement Oral

Date and Time 03/13/12 14 12 Place KNICKERBOCKER AVE AND BLEEKER

To Whom Made THOMAS CHELL, shield 1016, CMO 594

Tape No.

Substance of above statement

DEF STATES IN SUM AND SUBSTANCE THE DEF HAS THE DEF'S KNIFE IN THE DEF'S POCKET. THE DEF JUST MOVED TO BROOKLYN FROM LONG ISLAND AND WAS NOT AWARE OF THE NYC LAWS.

EXHIBIT 4

		New York City Police Department Omniform System - Complaints				
Report Cmd: 594	Jurisdiction: N.Y. POLICE DEPT	Record Status: Ready for Signoff, with Arrest	Complaint #: 2012-083-01698			
Occurrence NORTH EAST CORNER BLEECKER STREET Location: & KNICKERBOCKER AVENUE Name Of Premise: Premises Type: STREET Location Within: PUBLIC SIDEWALK Premise: Premise Visible By Patrol?: YES			Precinct: 083	Sector: 1	Beat:	Post:
Occurrence From: 2012-03-13 14:10 TUESDAY Occurrence thru: 2012-03-13 14:10 Reported: 2012-03-13 14:30 Complaint Received: PICK-UP					Aided #	Accident #
Classification: CRIM POSS WEAPON Attempted/Completed: COMPLETED Most Serious Offense Is: MISDEMEANOR PD Code: 782 CRIM POSS WEAPON 4M PL Section: 26501 Keycode: 236 DANGEROUS WEAPONS			Case Status: CLOSED Unit Referred To: Clearance: DETECTIVE Code: ARREST Log/Case #: 9 File #: 99 Trials: NO Requested?			
Was The Victim's Personal Information Taken Or Possessed? NO			Was The Victim's Personal Information Used To Commit A Crime? NO			
Gang Related? NO	Gang Intel Log #:	Name Of Gang: Child Abuse Suspected? NO				
DIR Required? NO	Child In Common? NO		Intimate Relationship? NO			
If Burglary: Forced Entry? Structure: Entry Method: Entry Location:	Alarm: Bypassed? Comp Responded?: Company Name/Phone: Crime Prevention Survey Requested?		If Arson: Structure: Occupied?: Damage by:			
Supervisor On Scene - Rank / Name / Command :			Canvas Conducted:	Interpreter(if used):		
NARRATIVE: AT TIPIO AJO DID OBSERVE DEFT IN POSSESSION OF A KNIFE IN PUBLIC VIEW. AJO DID RECOVER KNIFE FROM DEFT'S RIGHT PANTS POCKET.						

EXHIBIT 5

SUPPORTING DEPOSITION - POSSESSION OF KNIVES OR INSTRUMENTS WITH BLADES IN EXCESS OF FOUR INCHES (AC. 10-133(B)) - Page 1 of 2

CRIMINAL COURT OF THE CITY OF NEW YORK
PEOPLE OF THE STATE OF NEW YORK

against

Baglivio, Ryan
(Defendant)

Arrest No. K12625453Z

I, Det. Chell, Thomas, Shield No. 1016, am a Police Officer for the New York City Police Department. On 3/13/12 (date), at 1410 (time) at 66 Knickerbocker Ave + Bleecker St (location), County of Kings, I observed the defendant:

1. LOCATION:

on a roadway on a sidewalk on park grounds
 in a parking area in a shopping area on a beach
 in an alley or alleyway in a plaza in a driveway
 in a doorway or entranceway on a subway platform on a bridge
 in a playground or place of amusement
 other (describe location) _____

which is a public place, and in possession of a:

2. KNIFE OR DANGEROUS INSTRUMENT:

knife with a blade measuring more than four inches in length
 instrument, specifically (describe object) _____ with a blade measuring more than four inches in length

which I recovered from:

3. RECOVERY:

defendant's hand. defendant's pants pocket.
 the ground where I observed defendant drop it.
 the ground where I observed defendant throw it.
 defendant's person.
 other (describe location of recovery) _____

False statements made herein are punishable as a class A Misdemeanor pursuant to section 210.45 of the penal law.

3/13/12 Det 706

Date

Signature of Police Officer